

**CITY COUNCIL OF THE CITY OF SAN DIEGO
SUPPLEMENTAL DOCKET NUMBER 2
FOR THE REGULAR MEETING OF
MONDAY, MAY 8, 2006 AT 2:00 P.M.
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

**ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS
RESOLUTIONS:**

ITEM-S402: Vote to Validate Six Prior Resolutions to Authorize Kroll Funding.

(See Report from the City Attorney dated May 2, 2006.)

CITY ATTORNEY’S RECOMMENDATION:

Adopt the following resolution:

(R-2006-939)

Validating Resolutions R-300139, R-300423, R-300629, R-300630, R300780,
and R-301170 by the Council.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ITEM-S403: Authorization of Funding for Audit Committee and Related Entities.

MAYOR SANDERS' RECOMMENDATION:

Authorizing increased funding totaling \$5,625,948 for the Audit Committee, NTI Breakwater, KPMG, and Macias & Gini;

Authorizing the reallocation of \$11,427,312.80 in previously approved expenditures charged to the Public Liability Fund across all funds using an allocation based on pensionable salaries;

Authorizing the transfer of \$733,367.47 from the General Fund Unappropriated Reserves, Fund 100, to the Public Liability Fund-81140 for the net General Fund portion of these expenditures;

Delegating authority to the Mayor to administer the contract with Kroll and Willkie Farr & Gallagher;

Including, as a condition of this additional funding, that the Audit Committee shall produce all work product and investigation related materials at the conclusion of their engagement or upon request from the City of San Diego;

Directing the City Attorney to prepare the appropriate resolutions/ordinances associated with these actions.

SUPPORTING INFORMATION:

On March 8, 2005, the City Council established an Audit Committee of the City of San Diego, as contemplated by the Sarbanes-Oxley Act of 2002, to complete an investigation of matters involving the San Diego City Employees' Retirement System and to issue a report that would serve as the basis for KPMG to issue its audit of the City's 2003 Financial Statement. The KPMG audit is necessary for the City to return to the bond markets and regain its financial ratings. Willkie Farr & Gallagher LLP was engaged to serve as legal counsel.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ITEM-403: (Continued)

SUPPORTING INFORMATION: (Continued)

The Audit Committee's work has progressed and the Council has, on occasion, authorized increased funding for the investigative, legal and audit related work. On January 17, 2006, the Audit Committee last appeared before the City Council to provide a status report and to request additional funding to continue/complete its investigation. Kroll estimated that the Audit Committee's total additional funding would be between \$7-\$10 million. At that meeting, the Council authorized up to \$10 million. According to Kroll, as of that time, they had also incurred \$3.3 million in billed and unbilled expenses for which they had not been reimbursed and which were not included in the above estimate (see attached April 6, 2006, letter from Audit Committee).

The Audit Committee requests an additional \$3.3 million for professional expenses and up to \$800,000 in out of pocket expenses to complete the investigation and issue a report sometime in June. This final request would bring the Audit Committee to their January estimate of \$10 million to complete their work, and would bring the total cost of the Audit Committee investigation to \$20.3 million.

While this process has been more costly and more time consuming than originally contemplated, the Mayor recommends the additional funding be approved to bring this process to completion and bring the City one step closer to releasing its 2003 audit by KPMG. To facilitate the completion of the investigation and preparation of the final report, the Mayor requests that Council delegate the authority to the Mayor to administer the contract with Kroll and Wilkie Farr.

In addition, as a condition to this additional funding the resolution shall reflect that the Audit Committee agrees, at the conclusion of their engagement or upon request from the City of San Diego, to produce all work product and materials related to the investigation from January 2005 to the date of the written request. All appropriate privileges and confidential information will be maintained by the City as provided by law.

In addition to the funding requests sought by the Audit Committee, the following entities are requesting additional funding for related services:

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ITEM-403: (Continued)

SUPPORTING INFORMATION: (Continued)

1. \$75,948 for NTI Breakwater for the completion of electronic data compilation, bringing the total to \$330,000
2. \$1,300,000 for KPMG for monitoring of the Audit Committee and for auditing of the City's 2003 financial statement, bringing the total to \$4,400,000
3. \$150,000 for Macias & Gini for auditing of the City's 2004 and 2005 financial statements, bringing the total to \$1,710,456

The Audit Committee also demanded document production by SDCERS. As a negotiated resolution of costs associated with that production, including privacy rights protection, and to move this production along as quickly as possible, the City paid \$50,000 to SDCERS on April 28, 2006.

FISCAL CONSIDERATIONS:

Based on City Council Policy, the CFO's recommendation, and generally accepted accounting principles, the Mayor recommends allocation of this \$5,625,948 in new costs across all funds based on pensionable salaries (see attached spreadsheet). Consistent therewith, \$11,427,312.80 in previously authorized expenditures (\$10 million for Audit Committee, \$1,377,312.80 in outside Attorney's fees, and the \$50,000 payment to SDCERS noted above) which were allocated solely to the General Fund's Public Liability Fund, on an interim basis, will be reallocated across all funds based on pensionable salaries (see attached). The allocation/reallocation of this total of \$17,053,260.80 will result in \$12,160,680.27, to the Public Liability Fund and \$4,892,580.53, to other City funds. It is necessary to transfer \$733,367.47, from the General Fund Unappropriated Reserves to the Public Liability fund to meet the General Fund portion of these costs.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The City Council has authorized investigation related actions and associated funding on several occasions.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Kroll, Willkie Farr & Gallagher, NTI Breakwater, KPMG, Macias & Gini

Aud. Certs. 2600793, 2600794, 2600795, 2600796.

Dubick/Froman